IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3044 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SALES TAX COMMISSIONER - Petitioner(s)

Versus

HUSENABIBI AHEMADBHAI MANIAR - Respondent(s)

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Appearance :
MR MUKESH PATEL, ASSTT. GOVERNMENT PLEADER for Petitioner(s) : 1,
MS HINA DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 17/01/2006

ORAL JUDGMENT :

1.Heard learned Assistant Government Pleader Mr.Mukesh Patel on behalf of petitioner and learned advocate Ms.Hina Desai on behalf of respondent.

2.Sales Tax Commissioner, Ahmedabad, challenges Award passed by Labour Court, Ahmedbad, in Reference No.1201/1998 dated 15.3.2003. The Labour Court, Ahmedabad, set aside the order of termination and granted reinstatement to respondent with continuity of service with 40% backwages for interim period with effect from 3.10.1997.

3.Learned Assistant Government Pleader has raised contention before this Court that Sales Tax Department is not an `industry' but it is a sovereign function of State Government. He

relied upon the judgment in the case of Bangalore Water Supply and Sewerage Board v. Rajappa and others reported in **AIR 1978 SC 548**. He also submitted that it was duty of the Labour Court to consider such prima-facie fact, Government department being sovereign function, and Labour Court should not have held that Sales Tax Department is an `industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

4.Ms.Hina Desai, learned counsel for respondent, submits that before the Labour Court, the petitioner did not prove the fact that Sales Tax Department is not an industry by leading proper evidence before it. She submitted that when contention was raised by petitioner before Labour Court in written statement, then burden to prove this contention by leading proper evidence and

making proper submissions before Labour Court was upon petitioner. That aspect has been considered by Labour Court and as no proper evidence was led by petitioner before Labour Court and no such submissions were advanced by petitioner before Labour Court, the Labour Court came to conclusion that contention raised by petitioner was not proved, and therefore, Labour Court has rightly decided the Reference.

5.Mr.Mukesh Patel, learned AGP, submitted that termination order is dated 25.1.1995 and Labour Court granted 40% backwages with effect from 3.10.1997. He submitted that as per order passed by this Court, wages under Section 17B of the Act are paid to respondent with effect from 15.3.2003 and same are being paid continuously to respondent. Wages under Section 17B of the Act are Rs.600/- per month, paid by petitioner to respondent with effect from

15.3.2003.

6.I have considered submissions advanced by both the learned advocates. Fact remains that though contention was raised by petitioner to the effect that Sales Tax Department is not an `industry' within the meaning of Section 2(j) of the Act, it was not proved by leading proper evidence and no such submissions were made before Labour Court. However, Sales Tax Department is a Government Department. There was some negligence on the part of advocate who has not properly represented the case of Department before Labour Court. Therefore, according to my opinion, if one opportunity is given to the petitioner-Department to lead proper evidence in respect of contention raised by it before Labour Court and to make submissions, while setting aside the impugned Award, and in meanwhile directing petitioner to pay 17B wages under the Act till final

outcome of Labour Court proceedings, it will meet the ends of justice between parties. Therefore, considering fact that respondent is getting 17B wages with effect from 15.3.2003 and till date, petitioner is paying the said amount to respondent regularly the question whether the Sales Tax Department is an `industry' or not is required to be re-examined by the Labour Court after giving opportunity to both the parties and therefore, the award passed by the Labour Court dated 15.3.2003 in Reference No.1201 of 1998 is hereby quashed and set aside with a direction to the Labour Court, Ahmedabad, to decide the question whether Sales Tax Department is an `industry' or not by giving proper opportunity to respective parties and pass appropriate award within a period of six months from the date of receipt of writ of this judgment. The petitioner is directed to pay 17B wages regularly during the pendency of

Reference before Labour Court till fresh award is passed by Labour Court, Ahmedabad, in Reference No.1201 of 1998. It is hoped that both the parties will cooperate the Labour Court, Ahmedabad, in hearing and disposal of the Reference. Rule made absolute.

(H.K.RATHOD, J.)

(sunil)